IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1222 OF 2005
In
FIRST APPEAL NO.569 OF 2005

The Raja Bahadur Motilal Poona Mills Limited, a Company ... .. Applicant

Vs

1. Sai Construction Private Ltd, A company... ... and ors. .. Respondents

Shri V.V.Tulzapurkar, Senior Advocate i/b Shri S.G.Karandikar, for the applicant.

Shri Aspi Chinoy, Senior Advocate i/b Shri N.V.Bandiwadekar, for respondent no.1, and Shri R.M.Pethe, for respondent nos 2 and 3.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : April 19, 2005.

P.C.

1. In so far as the civil application is concerned, we have heard the learned senior counsel appearing for the parties.

2. Rule, returnable forthwith.

3. The property, in question, is of the applicant/appellant. Out of the said property, the

area admeasuring two lacs square feet is given for development to the respondents. In order to demonstrate the said property, in the agreement there is a specific clause which defines the "said plot". We have found that it makes a reference to Floor Area Ratio/Floor Space Index in terms of the Development Control Rules of Municipal Corporation of City of Pune, framed under the provisions of the Maharashtra Regional and Town Planning Act,1966. It also makes a reference to the easements, appurtenances and all other rights, all other primary and/or ancillary and/or supplementary rights, title, interest, claims etc. In so far as the development to the extent of two lacs square feet is concerned, the plaintiff/applicant is not having any objection. The whole dispute is about T.D.R., i.e. Transferable Development Rights, which one gets as a result of use of the land partially reserved for public purpose and/or in lieu of use of any other land of owner for public purpose etc elsewhere, as we find from the definition of "development right" in clause 9(A) of section 2 of the Maharashtra Regional and Town Planning Act,1966. The learned senior counsel appearing for the respondents has submitted that the development right includes right to use the FSI and TDR and, therefore, the respondents are entitled to

use the TDR.

4. It is brought to our notice by the learned senior counsel for the applicant that when the agreement was entered into, the respondents were not possessed of any TDR, but after the agreement the respondents have purchased the TDR from the market and is trying to utilise the said TDR on the property of the applicant. Even the learned counsel appearing for the respondents have agreed that after the agreement the respondents have purchased the TDR from the market and they are going to utilise the same on the property of the applicant.

5. On analysing the facts, we have noticed that the applicant is not possessing any TDR which is available to the applicant as a result of the partial use of the said property for public purpose and/or any other property of the applicant has been utilised for public purpose because of which the TDR is available to the applicant, the applicant could have utilised the TDR on this property. Therefore, things as it stands in so far as the applicant is concerned, the applicant can construct to the extent of FSI and nothing more than that. The applicant has given this property to the respondents by the agreement for

development. The question arises whether the respondent, who is not the owner of the said property but, however, purchased the said TDR in market can use the said TDR on the property of the applicant/appellant. Prima facie, we find that whatever rights are possessed and is transferable from the applicant, that much rights will be transferred to the respondents and the respondents cannot get any excess rights as against the said property. Therefore, prima facie,we feel that the TDR which has been purchased by the respondents, cannot be encumbered upon the property of the applicant/appellant. That is why the stay which was granted by this Court was confirmed by the Supreme Court and was in force till the final disposal of the suit. The respondents if allowed to construct TDR, the damage caused cannot be restored. Equally, equities in the matter will change to the prejudice of the applicant. The balance of convenience also requires that it is appropriate to maintain status-quo of the property till final disposal of the Appeal. These all circumstances persuade us to grant interim relief in terms of prayer clause (d). There shall be an interim relief in terms of prayer clause (d). Prayer clause (d) reads thus:

"(d) that pending the hearing and final disposal of the Appeal, this Hon’ble Court be pleased to stay the operation of the impugned Judgment and Decree dated 8th February 2005 and to continue the interim order dated 2nd January 2003 (being Exhibit 6 hereto)."

6. The civil application is, accordingly, disposed of.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

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